



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)**

MINUTES

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
Tuesday, August 12, 2014

I. CALL TO ORDER

Meeting was called to order at 9:00 a.m. by Chair Zuba; other members present:

Chuck Bodenhafer
Al Durrett
John Kakatsch
Jane Plummer – excused.
Joanne Shamp
James Steele
Hank Zuba

LPA Attorney: Derek Rooney
Staff Present: Josh Overmyer, Planning Coordinator
Belinda Smith, Permit Coordinator
Keith Laakkonen, Environmental Science Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION – Vice Chair Shamp

IV. MINUTES

A. Minutes of February 28, 2014

MOTION: Vice Chair Shamp moved to approve the Minutes for February 28, 2014 as presented; second by Mr. Bodenhafer.

VOTE: Motion approved; 6-0 (Ms. Plummer was excused).

B. Minutes of May 30, 2014

MOTION: Mr. Kakatsch moved to approve the Minutes for May 30, 2014 as presented; second by Mr. Steele.

VOTE: Motion approved; 6-0 (Ms. Plummer was excused).

C. Minutes of June 10, 2014

MOTION: Vice Chair Shamp moved to approve the Minutes for June 10, 2014 as presented; second by Mr. Bodenhafer.

Discussion was held regarding the designation of "...not an area of critical State concern." on Page 8.

VOTE: Motion approved; 6-0 (Ms. Plummer was excused).

A. DCI2014-0004 – Edison Beach House CPD Amendment

Chair Zuba opened the Public Hearing.

LPA Attorney Rooney swore in the witnesses.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – site visit; Mr. Kakatsch – site visit; Chair Zuba – site visit; Mr. Steele – site visit; Ms. Plummer – excused; Vice Chair Shamp – site visit; Mr. Bodenhafer – none.

Planning Coordinator Overmyer presented comments on behalf of the Town of Fort Myers Beach for the DCI2014-0004 Edison Beach House CPD amendment request to amend the schedule of uses to allow resort accessory uses. He displayed an aerial view of the property and indicated the location of the subject site (830 Estero Boulevard). He reviewed the Applicant's request, the background of the property, and the existing conditions of the subject site:

- Subject property is +/- 0.9 acres; property was rezoned CPD in 1997; amended by Resolutions 00-12, 01-13, and 08-48; and was developed as Edison Beach House in 2000.

He described definition of 'resort accessory use' – "means the use of a structure or premises that is customarily incidental and subordinate to a resort. See Use, principal, typical resort accessory uses are amusement devices, golf courses, parasailing operations office, personal watercraft operations office, and rental of beach furniture". He reviewed the existing Land Development Code Section 27-51 as it applied to parasail and personal watercraft regulations (Businesses hold a valid PWVL or PAL ...shall

not be located within 500' of any other business offering personal watercraft for rent or lease or parasailing activities, except for businesses that are co-located in accordance with LDC Sec. 27-54") and displayed an aerial view of the subject property and nearby PAL/PWVLs. He stated staff recommended approval of the request to amend the schedule of uses of the Edison Beach House CPD to allow accessory uses.

Vice Chair Shamp noted that Resort Accessory Uses had COP on premises.

Planning Coordinator Overmyer reported the applicable conditions on the Applicant's COP would remain unless changed by the subject CPD amendment.

Matthew Burt, General Manager of the Edison Beach House, discussed his view on the benefits of the rezoning request for the Town and visitors. He noted the Applicant's desire to have a parasail business at the site.

Public Comment opened.

Dean Kerkesner owner of Rebel Water Sports expressed his support to approve the subject rezoning request. He noted there were insufficient locations in the Town to move around the PAL/PWVL licenses. He suggested and discussed offering a "hardship license" for a business that would move to the subject location.

Bill Bronsord, Paradise Parasail, offered an overview regarding the subject situation and how some of the PAL/PWVL vendors were losing their locations to operate on the beach due to redevelopment.

Chair Zuba requested clarification on the "hardship license" mentioned by Mr. Kerkesner.

Planning Coordinator Overmyer explained there were some PAL/PWVL locations that have changed hands or the use changed.

LPA Attorney Rooney noted "hardship license" was not in the code.

Discussion was held concerning a 'single license' as it applied to the location(s) for PAL/PWVL; the current number of parasail vendors; and the use for subject Parcel B.

Patrick Ranalli, President of Ranalli Parasail, noted there were 7 parasail licenses and 11 wave runner licenses and there could be up to 18 parasail pick-up locations on the island. He explained his belief that parasailing should be directly at a parasail pick-up location with a licensed operation.

Discussion was held concerning examples of how other communities handle PAL/PWVLs; and beach furniture rentals on the beach.

Public Comment closed.

MOTION: Vice Chair Shamp moved to recommend that the Town Council approve the Applicant's CPD request finding that based on the testimony and materials provided at the Hearing that the Applicant has met all ten requirements for the rezoning; second by Mr. Bodenhafer.

Chair Zuba noted his concern regarding the number of parasail pick-up locations that would be 'unlicensed'.

VOTE: Motion approved; 5-1, Mr. Zuba dissenting (Ms. Plummer was excused).

Public Hearing closed.

B. DCI2014-0003 – Rowe RPD Extension

Chair Zuba opened the Public Hearing.

LPA Attorney Rooney swore in the witnesses.

Permit Coordinator Smith presented comments on behalf of the Town of Fort Myers Beach for the DCI2014-0003 Rowe RPD Extension request to allow a time extension for a Residential Planned Development. She displayed an aerial view of the property and indicated the location of the subject site (324 Estero Boulevard). She reviewed the Applicant's request, the background of the property, and the existing conditions of the subject site:

- A time extension of a previously approved Master Concept Plan allowing for the rezoning of 324 Estero Boulevard from Residential Multifamily (RM) to Residential Planned Development (RPD) utilizing the pre-disaster build-back provision found in Section 34-3237 of the Fort Myers Beach Land Development Code.
- The Local Planning Agency heard the original application on May 10, 2011 and recommended that the Town Council deny the request.
- The request was heard and approved by the Town Council on June 6, 2011 with the adoption of Resolution 11-07.

She pointed out the Applicant's reason for the request was due to illness in the family and the poor economy a Development Order had not been requested prior to the expiration date. She noted LDC Section 34-220 provided for extensions and that the Applicant had met the requirements for the extension.

Barb Rich, Rowe's Real Estate Agent, stated she was representing the Applicant(s) and explained due to Mrs. Rowe's illness and the economy that a Development Order was not requested prior to the expiration date.

Planning Coordinator Overmyer indicated the Applicants had previously submitted drawings in 2011; however, staff had not received any building permit information or development order for the project.

Discussion was held concerning what information the Applicants previously submitted to the Town.

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Mr. Bodenhafer asked if the Applicants intended to complete the project within the next two years.

Barb Rich indicated the Applicant's plan was to move forward with the plans; however, she did not have an exact date.

Planning Coordinator Overmyer explained how a request submitted for a Development Order within the two-year timeframe it would increase the amount of time for completion of the subject project.

Public Comment opened.

Janet Middleton, Property Manager for Estero Island Beach House, reported she was asked to present a letter from one of the EIBH owners to the LPA that requested the LPA deny the subject request for the time extension.

Vice Chair Shamp states she opposed the original application in May 2011 as it related to increased intensity and density. She added that she did not see anything in Section 34-220 that the Applicants did not meet.

Public Comment closed.

MOTION: Vice Chair Shamp moved to recommend that the Town Council approve the Applicant's request finding that based on the testimony and materials provided at the Hearing and that the Applicant has met all recommended Findings and Conclusions and was supported by LDC 34-220; second by Mr. Steele.

VOTE: Motion approved; 6-0 (Ms. Plummer was excused).

Chair Zuba closed the Public Hearing.

C. VAR2013-0009 – Tundo Variance

Chair Zuba opened the Public Hearing.

LPA Attorney Rooney swore in the witnesses.

Mr. Easterbrook, Easterbrook Consulting and Design representing the Applicant, gave an overview of the subject request to construct a deck off an existing bedroom [referred to photographs of the subject site submitted in the application packet].

Vice Chair Shamp questioned the ownership of the unit under the proposed deck as depicted in one of the photographs.

Mr. Easterbrook reported the Applicants owned Unit 21 and 22; and there was a letter from the owner of the unit in question (under the proposed deck) that indicated they supported the variance request.

Discussion was held concerning the proposed deck as it related to the location of window(s) and stairs of the condominium; width of the current deck; and the minimum size for the proposed deck.

Permit Coordinator Smith presented comments on behalf of the Town of Fort Myers Beach for the VAR2013-0009 Tundo Variance request in the RM Zoning District from LDC Table 34-3 to allow a 10' encroachment into the required 20' rear setback in order to construct a 10' X 20' covered deck off the second story bedroom of Unit 22. She displayed an aerial view of the property and indicated the location of the subject site (2550 Estero Boulevard). She reviewed the Applicant's request, the background of the property, and the existing conditions of the subject site:

- Developed in 1981 as Island House Beach Club (a 25 unit single-family residential condominium).
- October 28, 2003 the property was split creating two properties.
- The resulting parcel front on Estero Boulevard became Tropical Shores Condominium (one 3-story building containing a total of four condominium units).
- Unit 22 is the subject of the variance request.

She reported staff recommended approval of the Applicant's request subject to conditions that the request be approved only for a second story 10' X 20' deck as indicated on the drawings submitted by the Applicant.

Chair Zuba questioned the dimensions of the proposed deck.

Permit Coordinator Smith stated the proposed deck would be 10' X 20' wide.

Chair Zuba questioned if the approval would create precedent as it pertained to the setback.

Permit Coordinator Smith noted the uniqueness of the situation. She read a letter received from Jeffrey Rolson, President of the Island House Beach Club Condominium Association, which requested denial of the Applicants' request by the neighboring condominium.

Discussion ensued regarding the request for denial of the subject variance by the neighboring condominium association.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – none; Mr. Kakatsch – site visit; Chair Zuba – none; Mr. Steele – site visit; Ms. Plummer – excused; Vice Chair Champ – none; Mr. Bodenhafer – drive-by.

Discussion was held to determine if the variance request was for the *de minimus* amount; determination of the proposed deck dimensions (20' wide and 10' out, screened, and an insulated roof); and determination of the proposed deck location in relation to the window(s) and edge of the subject condominium and in relation to the neighboring condominium.

Public Comment opened.

No speakers.

Public Comment closed.

Vice Chair Shamp discussed the proposed dimensions by the Applicant and determining the *de minimus dimensions* of the subject deck; and suggested dimensions of 8' X 16' or 10' x 10' for *de minimus*. The 8' x 16' dimensions were the dimensions approved in the letter provided by the Tropical Shores Condominium Association.

Discussion was held to determine if the variance request was for the *de minimus* amount; and determination of the proposed deck dimensions; and it was noted by staff that the application was accepted by a former Town employee and that the current staff had not located or viewed the drawings previously submitted by Mr. Easterbrook.

LPA Attorney Rooney noted the lack of information since the LPA did not have the drawings from Mr. Easterbrook.

MOTION: Mr. Bodenhafer moved to continue VAR2013-0009 Tundo until the September 9, 2014 LPA meeting; second by Mr. Steele.

Vice Chair Shamp suggested the Applicant submit options for *de minimus* dimensions for the proposed deck.

LPA Attorney Rooney explained the LPA should express to Mr. Easterbrook that the case was being continued until the next meeting for which he could submit additional information and options unless he wanted the LPA to proceed with the decision today.

Mr. Bodenhafer questioned if Mr. Easterbrook would submit to the LPA drawings that showed 8' X 16' and 10' X 20' dimensions before their next meeting.

Mr. Easterbrook responded in the affirmative; and noted there was a zero line setback at the subject property.

Discussion continued regarding dimensions for the proposed deck.

Mr. Easterbrook requested a vote now since he believed all the information was submitted to the Town.

Planning Coordinator Overmyer pointed out that the drawing attached to agenda packet information (actual property boundaries of Tropical Shores Condominium) indicated there was a zero foot setback on all four sides.

Discussion was held concerning the motion on the floor.

VOTE: Motion approved; 6-0 (Ms. Plummer was excused).

Chair Zuba closed the Public Hearing.

D. Ord. 14-XX – PAL/PWVL Regulations

Chair Zuba opened the Public Hearing.

LPA Attorney Rooney offered a brief introduction on the proposed legislative matter and recounted how staff met with the stakeholders to identify issues with the existing code and review code language. He noted the biggest change concerned the language pertaining to the 500' separation between businesses of the same type.

Environmental Science Coordinator Laakkonen pointed out some of the other proposed amendments to Chapter 27 such as but not limited to rental of non-motorized watercraft.

LPA Attorney Rooney mentioned there was a provision that addressed "hardship" relocation.

Discussion was held concerning the storage location for paddleboard and kayaks (also addressed in LDC Chapter 14); the improved verbiage concerning fuel tank storage; locations for solicitation of customers; customer solicitation locations as it related to residential property, commercial property, freedom of speech, and property rights; and license renewals and/or the ability to sell businesses/licenses.

Mr. Durrett questioned the rental of personal watercraft such as but not limited to paddleboards at the Hyatt.

LPA Attorney Rooney noted the Hyatt property was recently incorporated into Bonita Springs and he would have to research the matter.

Public Comment opened.

Chris Weber, Mid-Island Water Sports, reported Bonita Springs allowed the Hyatt to have the personal watercraft rentals on a 'private basis'.

Discussion was held regarding the regulations concerning differences between personal watercraft and boat rentals; and Section 27-49(1)(f) regarding solicitation of customers.

Mr. Durrett questioned if the Town and the stakeholders were content with the proposed ordinance.

Environmental Science Coordinator Laakkonen explained if the industry was content so was staff.

Chris Weber, Mid-Island Water Sports, discussed the proposed ordinance:

1. License renewal requirements as it pertained to loss of location - suggested eliminating the insurance requirement if the business was not operating.
2. Agreed on the 15' but believed 20' too far back.
3. Requested clarification on Section 27-49(1)(f) regarding solicitation of customers – discussion was held and Environmental Science Coordinator Laakkonen would correct a scrivener's error in the proposed ordinance and LPA Attorney Rooney would modify the language of the proposed amendments.

LPA Attorney Rooney suggested if the LPA wanted to move this item forward that one of the recommended changes would be to restrict active solicitation to the property line.

Mr. Durrett recognized Mr. Kerkesner.

Dean Kerkesner owner of Rebel Water Sports discussed his impression of the language pertaining to the 500' separation and his experience at the PAL/PWVL stakeholder workshop(s). He expressed his belief that the proposed ordinance was good for the industry.

LPA Attorney Rooney explained the LPA could include language that would address the request to eliminate the insurance requirement if a business was not operating.

Discussion was held regarding the elimination of insurance requirements (liability insurance) if a business was not in operation; and differences between town and business insurance requirements.

LPA Attorney Rooney explained he was disinclined to ask to continue the insurance coverage from a litigation strategy standpoint.

Discussion was held concerning insurance and liability; and other kayak and paddleboard vendors.

Environmental Science Coordinator Laakkonen reported the industry had noted their liability insurance required people on the paddle-crafts to wear a lifejacket and adhere to safety regulations and was covered by a State agency.

Public Comment closed.

Chair Zuba recognized Mr. Weber.

Chris Weber, Mid-Island Water Sports, discussed an ordinance provision that would help two vendors that had PWVL licenses who had been prevented from renting paddleboards and kayaks.

MOTION: Mr. Bodenhafer moved to recommend approval of the Ordinance 14-XX PAL/PWVL Regulations based on the best interest of the health, safety and welfare of the citizens,

residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA recommends that the Town Council adopt the proposed ordinance with changes as noted Section 27-53(d) to add removing the insurance requirements of Section 27-56 and allow for notice on reactivation of license and to adopt a solicitation policy limited to the property boundaries excepting internet, brochures at hotels, etc. ; second by Vice Chair Shamp.

VOTE: Motion approved; 6-0 (Ms. Plummer was excused).

Chair Zuba closed the Public Hearing.

Recessed at 10:40 a.m. - Reconvened at 10:50 a.m. (approximately)

E. Capital Improvement Plan Fiscal Year 2015 –Comp Plan Analysis

Chair Zuba opened the Public Hearing.

Planning Coordinator Overmyer explained most of the budget items in the proposed Resolution were budget carryover items (i.e. Mound House, etc.).

LPA Attorney Rooney explained the review of the proposed Resolution was part of the LPA's Comprehensive Plan duties and they would determine that it was consistent with the Comprehensive Plan.

Discussion was held concerning the following 2014-2015 CIP items:

- Newton Park seawall – discussed difference between seawall and a bulkhead, conflicting policy, planting of vegetation in front of the subject seawall – staff noted work was needed to address any conflicting or outdate policy language (i.e. through EAR process); **finding consistency with seawall provisions in the Comp Plan**; and discussion was held concerning the need to address the flow and impact of the water current(s) at the subject area.
- Problems with 'patching' the roads in the water improvement project areas; **investigate the economic effects of the transportation and paving program**.
- Beach raking, the need to address and find an answer to 'low sand' issues at Newton Park as a critical area along the beach; vegetation and other non-armoring options added to the Comp Plan.
- Beach and bay access improvements and public dock - discussion was held and it was noted comfort stations were not included in this item; Lee County beach accesses on north Estero Boulevard that were required to be open and were not; trolley stops and restrooms noted in the Comp Plan.

MOTION: Mr. Steele moved regarding Resolution 2014-010 now, therefore, be it resolved by the LPA of the Town of Fort Myers Beach, Florida to recommend the Town Council find the nine items proposed in the 2014-2015 CIP are consistent with the

Comprehensive Plan along with the recommendations for transportation and seawalls:
second Mr. Durrett.

VOTE: Motion approved; 6-0 (Ms. Plummer was excused).

Chair Zuba closed the Public Hearing.

MOTION: Vice Chair Shamp moved to adjourn as the LPA and reconvene as the Historic Preservation Board; second by Mr. Bodenhafer.

VOTE: Motion approved; 6-0 (Ms. Plummer was excused).

Adjourn as LPA and reconvened as Historic Preservation Board – 11:10 a.m.

Ms. Shamp reported the proposed Chapter 22 amendments would come back to the HPA to correct an error regarding 'historic districts'; and explained how they could strike-out the sections and references about historic districts. She requested approval to fix the language and bring it back to the HPB at the September meeting for review.

MOTION: Mr. Zuba moved to move the item forward to remove the language for the establishment of historic districts; second by Mr. Kakatsch.

VOTE: Motion approved; 6-0 (Ms. Plummer was excused).

MOTION: Mr. Kakatsch moved to adjourn as Historic Preservation Board and reconvene as the LPA; second by Mr. Zuba.

VOTE: Motion approved; 6-0 (Ms. Plummer was excused).

Adjourn as Historic Preservation Board and reconvene as the LPA – 11:12 a.m.

V. LPA MEMBER ITEMS AND REPORTS

Mr. Kakatsch – questioned the existence of a backflow valve from the bay where the storm sewers were located and requested staff to investigate the issue.

Mr. Bodenhafer – no items or report.

Mr. Durrett – reported there were tours with jet skis in the back bay that were negatively impacting the sea grass beds and the leader of the tour(s) had been issued citation(s). He suggested when citations were issued of this nature, that the Town should be notified in order to be aware of the citation(s) when the jet ski operator license was up for renewal.

Environmental Science Coordinator Laakkonen noted the Town's jurisdiction was limited to within 1,000 feet of the Town; however, the Town could approach the business owner(s) when jet ski operation was negatively impacting the protected bird areas and the ecology of Estero Bay. He discussed the ability to cite the business under the code enforcement process; and how to change the code to require some type of training for the jet ski businesses regarding eco-tourism.

Discussion was held concerning the origination point of the jet skis as Fort Myers Beach; and the need for the Town to be aware of which jet ski business received a warning or citation.

LPA Attorney Rooney reported Bonita Springs was dealing with the same issue and described how they were working with Commissioner Kiker to have more signage. He recommended the Town create a dialog with Bonita Springs to coordinate an effort.

Discussion was held concerning citations issued to the jet ski vendors and notification to the Town; and potential difficulties with using code enforcement for the problem.

Mr. Durrett offered to contact Fish & Wildlife and the LCSO regarding obtaining reports when citations were issued in the back bay.

Environmental Science Coordinator Laakkonen stated he would forward the appropriate contact information to Mr. Durrett.

Mr. Steele – noted about a year ago the LPA received a report on “open un-resolved sign issues” and questioned if any remained.

Planning Coordinator Overmyer reported that the Lani Kai was the one lingering sign issue; however, they did have an active variance application to deal with signage on the main resort, parking lot, and bay side hotel. He pointed out the variance for the main property was approved a year ago, but the property owner had not moved forward with the approved variance. He added the Town was working on the matter with the applicant; however, the property owner's attorney was presently out-of-town. He reported he recently became aware of other sites that did not meet the required setback from recent Lee County surveys for the road improvement.

Vice Chair Shamp – questioned the status of the post-disaster recovery plan.

Planning Coordinator Overmyer noted it was on the LPA Action List.

Vice Chair Shamp – stressed the importance of the plan and the need to set a date to review the issue.

Chair Zuba requested Planning Coordinator Overmyer inform Town Manager Stilwell of the LPA's strong urging to get the post-disaster recovery plan reviewed and approved.

Discussion was held regarding the review of the post-disaster recovery plan; and consensus was to place the matter on the October agenda for initial review.

Vice Chair Shamp – discussed her concerns regarding the real estate signage in the Town as it pertained to the consistency and the location/placement of the signs.

Town Attorney Rooney discussed how Bonita Springs was having some problems with lawsuits regarding signage and how Punta Gorda enforced real estate sign requirements. He explained the overall signage for residential property that could be reviewed and noted commercial property would be a little different. He discussed the enforceability of temporary signage and reported he would look into the issue.

Chair Zuba requested the LPA Attorney also research political signage.

Mr. Bodenhafer questioned if staff would describe their new assignment of duties.

Permit Coordinator Smith reported yesterday she was assigned to be the lead person in Community Development; and Josh Overmyer would remain handling the LPA.

Chair Zuba – discussed an ad hoc committee to deal with the downtown.
Ms. Plummer – was excused.

Mr. Durrett offered kudos to Environmental Science Coordinator Laakkonen for his work on the PAL/PWVL ordinance amendments.

Vice Chair Shamp pointed out the significance of LPA members attending Council meetings when an LPA agenda item appears before the Council for final approval.

Planning Coordinator Overmyer explained the ‘TBDs’ listed on the LPA Action List and how Council wanted to have all the information and approved minutes from the LPA when a matter came before them. He reported outdoor display was scheduled for introduction to the Council on August 18th and final adoption on September 4th.

Discussion was held concerning the LPA Action List and notification to the LPA of scheduled agenda items on the Council agenda.

LPA Attorney Rooney suggested the LPA appoint a representative and alternate to attend the Council meetings.

Discussion was held regarding appointing a representative and alternate to attend the Council meetings; and it was decided Vice Chair Shamp would be the representative and Chair Zuba was the alternate.

VI. LPA ATTORNEY ITEMS

LPA Attorney Rooney – reported Council had requested he work on the land development regulations and suggested it would be helpful if the LPA consolidated all of their responsibilities into one, and he would add the representative and alternate to attend the Council meetings to the list of duties. He discussed other matters he was working on such as but not limited to creating staff flow chart, streamlining motions, and a mass swearing in at the start of the meetings and ex-parte communications.

Vice Chair Shamp offered to work with LPA Attorney Rooney to coordinate any changes he noted with the LPA's Policy & Procedures.

Discussion was held concerning LPA motions.

VII. COMMUNITY DEVELOPMENT ITEMS

Planning Coordinator Overmyer - no items or report.

VIII. ITEMS FOR NEXT MONTH'S AGENDA

No discussion.

IX. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

X. ADJOURNMENT

MOTION: Motion by Mr. Kakatsch, second by Mr. Durrett to adjourn.

VOTE: Motion approved; 6-0 (Ms. Plummer was excused).

Meeting adjourned at 11:45 a.m.

Adopted September 9, 2014. With changes. Motion by Shamp, second by Durrett.

Vote: 5-0, Bodenhafer and Steele excused.

Signature 

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